

The opinion in support of the decision being entered today was **not** written for publication in a law journal and is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

\_\_\_\_\_  
BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
\_\_\_\_\_

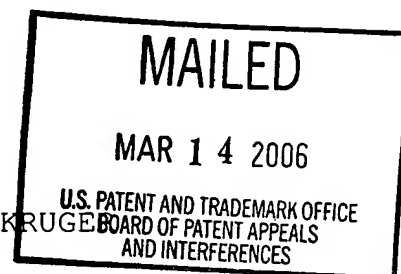
Ex parte STEFAN MIERSCH and PETER-JURGEN KRUGER

\_\_\_\_\_  
Application No. 10/008,603  
\_\_\_\_\_

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER  
\_\_\_\_\_

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on March 3, 2006. A cursory review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

On July 25, 2005, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 41.37). However, the Appeal Brief filed on July 25, 2005 does not comply with the new rules under 37 CFR § 41.37(c) which states in-part:



The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section . . . ,

- (i) *Real party in interest.*
- (ii) *Related appeals and interferences.*
- (iii) *Status of claims.*
- (iv) *Status of amendments.*
- (v) *Summary of claimed subject matter.*
- (vi) *Grounds of rejection to be reviewed on appeal.*
- (vii) *Argument.*
- (viii) *Claims appendix.*
- (ix) *Evidence appendix.*
- (x) *Related proceedings appendix.*

It has been determined that the following sections are mislabeled in the Appeal Brief filed July 25, 2005:

**"VI. Issues"** should be labeled "Grounds of rejection to be reviewed on appeal" as set forth in 37 CFR § 41.37(c)(1)(vi);

**"WHAT IS CLAIMED IS:"** should be labeled "Claims appendix," as set forth in 37 CFR § 41.37(c)(1)(viii); and

**"EXHIBIT 2"** should be labeled "Evidence appendix," as set forth in 37 CFR § 41.37(c)(1)(ix).

Application No. 10/008,603

The required headings and/or content are missing:

"Summary of claimed subject matter" as set forth in 37 CFR § 41.37(c)(1)(v); and

"Related proceedings appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

It is required that a substitute Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c).

For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

Further review of the application reveals that an Information Disclosure Statement (IDS) received on May 6, 2002 is incomplete. There is no listing of references, or a Form 1449 accompanying the IDS. Clarification and correction is required.

Accordingly, it is

**ORDERED** that the application is returned to the examiner:

(1) to hold the Appeal Brief filed on July 25, 2005 defective;

(2) to notify appellants to file a substitute Appeal Brief in compliance with 37 CFR § 41.37;

Application No. 10/008,603

(3) to consider the substitute Appeal Brief and, if necessary, vacate the Examiner's Answer mailed October 28, 2004 and issue a new Examiner's Answer;

(4) to provide clarification and correction of the IDS received May 6, 2002 by submitting a listing of the references or a Form 1449;

(5) to have said reference listing or 1449 scanned into the official record;

and

(6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: 

DALE M. SHAW

Program and Resource Administrator  
(571) 272-9797

cc: WHYTE HIRSCHBOECK DUDEK, S.C.  
555 EAST WELLS STREET  
STE 1900  
MILWAUKEE, WI 53202

DMS/hh